Annamalai a/l Muthu & Ors v Nagappa a/l Muthu

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 22–64 OF 1996
ALAUDDIN J
17 JULY 2002

Land Law — *Transfer — Validity of — Fraudulent misrepresentation — Whether transferor had executed transfer form based on defendant's fraudulent misrepresentation — Whether defendant remained a bare trustee of property*

The plaintiffs and the defendant were the children and beneficiaries of one Sinnathai @ Cinathai d/o Soorian ('the deceased'). The brothers' contest involved a piece of property in Kota Setar, Kedah ('the property'). The property was registered in the deceased's name on 8 April 1963. In June 1968, the property was transferred to the second plaintiff who in turn charged it to the Kedah Government Medical and Health Department Cooperative Thrift and Loan Society. The charge was discharged in 1972 and the property retransferred to the deceased in 1973. In 1973, the defendant took the deceased to his house and whilst at his house, the defendant influenced the deceased to charge the property to a moneylender in order to obtain a loan for the defendant. The deceased acceded to the defendant's request on the condition that upon repayment of the loan, the defendant would cause the charge to be discharged and have the property retransferred to the deceased. Ten years later, the deceased asked for the return of the issue document of title to the property but the defendant declined to surrender the same. Subsequently, the deceased checked at the Kota Setar land office and was informed that the property had been charged to a moneylender in September 1973 and registered in the defendant's name in October 1973. The deceased then filed a suit against the defendant but the suit could not be proceeded with due to the deceased's death. The deceased did however, file a private caveat. The plaintiffs' claim was that the defendant was only a bare trustee and was holding the property in trust for the estate of the deceased. The defendant, on the other hand, alleged that he had settled the deceased's loan on her behalf and as consideration, the deceased transferred the property to him. The transfer form (in Form 14A), however, showed that the consideration for the transfer of the property was 'love and affection'.

Held, allowing the plaintiffs' claim:

(1) The deceased did not make an outright transfer of the property to the defendant. Although the property had been transferred to the defendant, the evidence adduced showed that earlier on, the deceased had made a similar transfer of the property to the second plaintiff to enable the latter to obtain a loan. From the deceased's action, the inference to be drawn was that she had treated the issue document of title to the property as a negotiable instrument that she could lend to her children and take back (see p 230B, H–I).

(2) The loan was granted by the moneylender for the benefit of the defendant and not the deceased. The defendant's version that the deceased had borrowed the money and had transferred the property to the defendant when he agreed to settle the loan on the deceased's behalf was hard to believe. There was no reason for the deceased to borrow money. She had worked as an 'amah' in a hospital and she was free of commitments. On the other hand, the defendant had confessed to having two wives and 14 children. Further, evidence had been led to show that the defendant needed money to arrange for one of his daughter's wedding (see p 231E–F).

(3) The documentary evidence showed that the transfer of the property to the defendant was registered just three weeks after the property was charged to the moneylender. The short time frame within which the property was charged and later transferred clearly showed that the defendant intended to make it appear that the deceased needed money and that the property was transferred to him so that he could settle the loan. There was no evidence to show that the deceased had transferred the property for settling the loan. In fact, the consideration for the transfer as stated in the Form 14A was love and affection. Accordingly, the deceased was induced into signing the transfer on the defendant's fraudulent misrepresentation that the property would be retransferred to her upon repayment of the debt to the moneylender (see pp 230B, 231G–H).

(4) The deceased had executed the Form 14A on the fraudulent misrepresentation that it was to help the defendant get a loan and on the express undertaking that it would be returned to her, in the same way as the second plaintiff had 'borrowed' the issue document of title and returned the same. In the instant case, there was a relationship of trust between the deceased and the defendant. The deceased had no reason to believe that the defendant, her own son, would cheat her of her own land. From the evidence adduced, it had been shown beyond doubt that there was an element of dishonesty on the part of the defendant which resulted in the deceased parting with the property. In the circumstances, the defendant was a bare trustee and had held the property in trust for the deceased's children, namely, the three plaintiffs and the defendant (see pp 232B–C, 233F–H).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan adalah anak-anak dan benefisiari seorang bernama Sinnathai @ Cinathai d/o Soorian ('si mati'). Persengketaan di antara adik-beradik ini melibatkan sebidang hartanah di Kota Setar, Kedah ('hartanah tersebut'). Hartanah tersebut didaftarkan atas nama si mati pada 8 April 1963. Pada bulan Jun 1968, hartanah tersebut dipindahmilik kepada plaintif kedua yang mencagarkannya kepada Persatuan Koperasi Jimat-

Cermat dan Pinjaman Jabatan Perubatan dan Kesihatan Kerajaan Kedah. Cagaran tersebut dilepaskan pada tahun 1972 dan hartanah tersebut dipindahmilik semula kepada si mati pada tahun 1973. Pada tahun 1973, defendan telah membawa si mati ke rumahnya dan ketika di situ, defendan telah mempengaruhi si mati untuk mencagarkan hartanah tersebut kepada seorang pemberi pinjam wang supaya defendan mendapat pinjaman. Si mati menyetujui permintaan defendan dengan syarat bahawa atas bayaran balik pinjaman itu, defendan akan menyebabkan cagaran tersebut dilepaskan dan hartanah tersebut dipindahmilik semula kepada si mati. Sepuluh tahun kemudian, si mati meminta supaya dokumen keluaran hak milik kepada hartanah tersebut dikembalikan kepadanya tetapi defendan enggan menyerahkannya. Berikutan itu, si mati telah menjalankan satu pemeriksaan di pejabat tanah Kota Setar dan diberitahu bahawa hartanah tersebut telahpun dicagarkan kepada seorang pemberi pinjam wang pada bulan September 1973 dan didaftarkan dalam nama defendan pada bulan Oktober 1973. Si mati kemudiannya memfailkan satu guaman terhadap defendan tetapi guaman tersebut tidak boleh diteruskan disebabkan kematian si mati. Namun begitu, si mati telah memfailkan satu kaveat persendirian. Tuntutan plaintif-plaintif adalah bahawa defendan hanyalah seorang pemegang amanah biasa dan memegang hartanah tersebut atas amanah untuk harta pusaka si mati. Sebaliknya, defendan mengatakan bahawa beliau telah menjelaskan pinjaman si mati bagi pihaknya dan sebagai balasan, si mati telah memindahmilik hartanah tersebut kepadanya. Walau bagaimanapun, borang pindahmilik (dalam Borang 14A) menunjukkan bahawa balasan untuk pindahmilik tersebut adalah 'kasih sayang'.

Diputuskan, membenarkan tuntutan plaintif-plaintif:

(1) Si mati tidak membuat pindahmilik yang nyata ke atas hartanah tersebut kepada defendan. Walaupun hartanah tersebut telah dipindahmilikkan kepada defendan, keterangan yang dikemukakan menunjukkan bahawa sebelum ini, si mati telah membuat pindahmilik yang serupa ke atas hartanah tersebut kepada plaintif kedua untuk membolehkannya memperolehi pinjaman. Dari tindak-tanduk si mati, inferens yang harus disimpulkan adalah bahawa beliau telah menganggap hakmilik dokumen kepada hartanah tersebut sebagai satu instrumen boleh runding di mana beliau boleh pinjamkan kepada anak-anaknya dan boleh diambil kembali olehnya (lihat ms 230B, H–I).

(2) Pinjaman telah diberikan oleh pemberi pinjam wang untuk manfaat defendan dan bukan si mati. Versi defendan bahawa si mati telah meminjam wang dan memindahmilik hartanah tersebut kepada defendan apabila beliau bersetuju untuk menyelesaikan pinjaman bagi pihak si mati adalah sukar untuk dipercayai. Tiada sebab untuk si mati meminjam wang. Beliau telah bekerja sebagai seorang 'amah' di sebuah hospital dan bebas daripada apa-apa tanggungan. Sebaliknya, defendan telah mengaku mempunyai

dua orang isteri dan 14 orang anak. Seterusnya, keterangan telah dikemukakan untuk menunjukkan bahawa defendan memerlukan wang untuk perkahwinan salah seorang daripada anak perempuan beliau (lihat ms 231E–F).

(3) Keterangan dokumentari menunjukkan bahawa pindahmilik hartanah tersebut kepada defendan telah didaftarkan selepas hanya tiga minggu hartanah tersebut dicagarkan kepada pemberi pinjam wang. Jangkamasa yang pendek dalam mana hartanah tersebut dicagarkan dan kemudiannya dipindahmilik jelas menunjukkan bahawa defendan berhasrat agar ianya kelihatan seolah-olah si mati memerlukan wang dan bahawa hartanah tersebut dipindahmilik kepadanya supaya beliau boleh menyelesaikan pinjaman tersebut. Tiada keterangan untuk menunjukkan bahawa si mati telah memindahmilik hartanah tersebut demi menyelesaikan pinjaman tersebut. Sebenarnya, balasan untuk pindahmilik seperti yang dinyatakan dalam Borang 14A adalah kasih sayang. Dengan itu, si mati telah dipengaruhi untuk menandatangani pindahmilik atas salah nyata defendan yang fraud bahawa hartanah tersebut akan dipindahmilik semula kepada beliau setelah hutang dibayar balik kepada pemberi pinjam wang (lihat ms 230B, 231G–H).

(4) Si mati telah menyempurnakan Borang 14A atas salah nyata berdasarkan fraud bahawa ianya adalah untuk membantu defendan mendapatkan pinjaman dan atas akujanji nyata bahawa ia akan dikembalikan kepadanya, dalam cara yang sama di mana plaintif kedua telah 'meminjam' hakmilik dokumen tersebut dan memulangkan yang sama. Dalam kes ini, wujudnya satu hubungan berdasarkan kepercayaan di antara si mati dan defendan. Si mati tidak mempunyai sebab untuk mempercayai bahawa defendan, anak lelaki sendiri, akan menipu beliau demi tanah beliau sendiri. Dari keterangan yang dikemukakan, telah dibuktikan melampaui keraguan bahawa adanya unsur ketidakjujuran pada pihak defendan yang telah menyebabkan si mati melepaskan hartanah tersebut. Dalam keadaan ini, defendan merupakan pemegang amanah biasa dan telah memegang hartanah tersebut atas amanah untuk anak si mati, iaitu, plaintif-plaintif dan defendan (lihat ms 232B–C, 233F–H).]

Notes

For cases on validity of transfer, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4052–4057.

Cases referred to

Datuk Jaginder Singh & Ors v Tara Rajaratnam [1983] 2 MLJ 196 (folld)

Legislation referred to

National Land Code s 340(2)(a)

C Megalai (*Meg Nacha & Co*) for the plaintiff.
C Shanmugaiah (*C Shanmugaiah & Co*) for the defendant.

Alauddin J: The plaintiffs and the defendant in this case are all children and beneficiaries of one Sinnathai @ Cinathai d/o Soorian, the deceased. The four brothers are contesting over a property known as SPK 20808, Lot No 639, Mukim Alor Merah, Kota Setar, Kedah ('the property'). The property was registered in the name of their mother, Sinnathai d/o Soorian ('the deceased'), on 8 April 1963.

On 22 June 1968, the property was transferred to the second plaintiff who in turn charged it to the Kedah Government Medical and Health Department Cooperative Thrift and Loan Society on 11 October 1968. The said charge was discharged in 1972 and the property retransferred to the deceased in 1973.

During her lifetime, the deceased who was working as an amah at the General Hospital, Alor Setar, was staying with the first and second plaintiffs and their families on the property. As a matter of fact, the property was purchased from a chettiar by installment payment through the joint income of the deceased, the first and second plaintiffs. The defendant was then staying separately.

Somewhere in 1973, the defendant came to the plaintiffs' house and took the deceased to his house in Sungai Petani. Whilst at his house, the defendant managed to influence the deceased to charge the property to a moneylender in order to obtain a loan for the defendant. The deceased acceded to the defendant's request on the condition that the defendant would discharge the said charge upon repayment of the loan and have the property transferred back to the deceased.

Ten years had since passed. There was no news from the defendant. The deceased decided to pay a visit to the defendant. It was then that the deceased had asked for the return of the issue document of title to the property but the defendant declined to surrender the same.

Subsequently, the deceased accompanied by the first plaintiff went to the Land Office Kota Setar to check. There they were informed that the property was registered in the name of the defendant who had refused to transfer back the property to the deceased. The register document of title at the Land Office Kota Setar reveals that there is an entry vide Jilid 37, Folio 52, Perserahan No 2575/1973 which shows that the property was charged to one MT Sithambaram Chettiar on 26 September 1973 and a further entry showing that the property was transferred to the defendant on 17 October 1973 vide Perserahan No 2801/1973, Jilid 176, Folio 89.

As a result, the deceased was left with no option but to file a suit against the defendant vide High Court Alor Setar Civil Suit No 58 of 1982. The suit could not be proceeded with because of the deceased's death.

The plaintiffs' claim that the defendant is only a bare trustee holding the property in trust for the estate of the deceased. The defendant on the

other hand refuted the claim and took the stand that the deceased had voluntarily effected the transfer of the said land to him out of love and affection. A

From the facts of this case the following issues arise for my consideration:

(i) did the deceased make an outright transfer of the property to the defendant? B

(ii) was the deceased induced into signing the transfer on the fraudulent misrepresentation that the property would be retransferred to her upon the debt due to Chitambaran Chettiar being settled?

(iii) was the loan granted by Chitambaran Chettiar for the benefit of the defendant or the deceased? C

In order to determine the above issues, the total appreciation of the viva voce evidence given before me becomes unavoidable.

The deceased was an illiterate working as an amah at the Alor Setar General Hospital whereas the defendant was attached to the police force. D

The deceased in her lifetime lived with the first and second plaintiffs at No 58, Alor Semadom, Alor Setar, Kedah ('the property') which is supported by the evidence of the first plaintiff at p 3 of the notes of evidence as follows:

> masa dia meninggal emak tinggal dengan saya. E

The said evidence is corroborated by the evidence of the defendant ('DW2') at p 18 of the notes of evidence as follows:

> Tahun 1973, emak tinggal di Alor Setar dengan plaintiff kedua, dan plaintiff pertama juga ada keluarga. Dalam tahun 1973, plaintiff pertama tinggal di No 58, Alor Semadom. F

The defendant until his retirement lived in Sungai Petani. His evidence at p 19 of the notes of evidence reads as follow:

> Selepas bersara, saya tinggal di No 59, Alor Semadom. Saya bina rumah dalam tahun 1978. G

From the above evidence, it is clear that the defendant did not have possession or control over the property until after his retirement in 1978.

From the evidence available, it would appear to me that the defendant here is hiding behind the cloak of indefeasibility of title to defeat the interest of the other beneficiaries. H

Although the property has been transferred in the name of the defendant, the evidence adduced shows that earlier on the deceased had made similar transfer of the *same* property to the second plaintiff to enable him to obtain a loan as clearly shown in P1 ('the title deed').

From the deceased's action, I am led to the inference that she had treated the title deed to the property as a negotiable instrument which she could lend to her children and take back. This is further strengthened by the evidence of PW3 at p 8 of the notes of evidence which reads: I

A Defendan pinjam geran untuk gadaikan tanah tersebut bagi dapat pinjaman dan berjanji akan pulangkan geran tersebut.

As alluded to earlier, the deceased in her lifetime had instituted proceedings against the defendant vide Civil Suit No 58/82 ('exh P4'). This fact is further substantiated by the evidence of PW4 at p 10 of the notes of B evidence which reads as follow:

> I was requested to file a suit by Madam Cinathai d/o Soorian (deceased). In January 1982, Madam Cinathai (deceased) gave me instructions to institute action against one of her sons Nagappa s/o Muthu.

And further, PW4 stated:

C

> Plaintiff died before suit could be heard. Plaintiff did file caveat on property.

Upon perusal of exh D5, ie Form 14A, the consideration for the transfer of the property is stated as 'Kasih Sayang' whereas the defendant ('DW2') in his own words stated (at p 15 of the notes of evidence):

D

> Ketiga-tiga plaintiff enggan jelaskan hutang tersebut. Lepas itu, emak datang jumpa saya di Sungai Petani supaya jelaskan hutang tersebut.

and further down, the defendant stated:

> Emak saya dapat pinjaman dari Sornam Chettiar. Selama *dua bulan* emak bayar interest.
>
> E *Selepas* dua bulan emak datang jumpa saya. Emak kata tak sanggup jelaskan bayaran hutang tersebut dan mohon supaya saya jelaskan bayaran hutang. (Emphasis added.)

According to the defendant, it was the deceased who needed and borrowed money and transferred the property to him to settle the loan. I find it hard F to believe the defendant's version because to me there was no reason for the deceased to borrow money. The deceased was working as an amah and she was free of commitments. On the other hand, the defendant had confessed that he has two wives and 14 children. Further, evidence has been led to show that the defendant needed money to arrange for one of his daughter's wedding. This evidence calls for serious consideration as to why the G deceased would have to borrow money. All these facts go to show that the transfer of the property to the defendant was not an outright transfer as claimed.

Further, documentary evidence shows that the transfer of the property to the defendant was registered just three weeks after the property was H charged to the moneylender. The short time frame within which the property was charged and later transferred clearly shows a design and purpose on the part of the defendant who intended to make it appear that the deceased needed money and that the property was transferred to him so that he could settle the loan. There was no evidence to show that the deceased transferred the property for settling the loan. This could have well I been stated as the consideration under 'balasan' in Form 14A.

Upon scrutiny of the whole of the evidence of the defendant, I find that there is a high degree of dishonesty on his part.

For instance, at p 15 of the notes of evidence, the defendant testified thus:

> Sornam kata dia tidak percaya kepada emak saya kerana emak sakit tua.

However, Sornam ('PW3') himself said in evidence at p 23 of the notes of evidence:

> Masa itu emak defendan lebih kurang 60–65 tahun. Geran ditunjuk kepada saya, saya tak *was-was* beri pinjaman. (Emphasis added.)

Considering all the facts and circumstances of this case, I hold that the deceased had effected Form 14A on the fraudulent misrepresentation that it was to help the defendant get a loan and on the express undertaking that it would be given back to her, just the way the second plaintiff 'borrowed' the issue document of title to the property and returned it.

It must be observed that the relationship between the transferor and the transferee here is that of a mother and son, and I must say with confidence that most mothers (if not every mother) would believe that their sons would honour their words. Unfortunately, here the deceased had misplaced her trust and the defendant had taken advantage of the situation.

The Form 14A was supposedly interpreted and explained to the deceased by DW3. DW1, the attesting officer had to rely on what DW3 conveyed to him. There is no doubt whatsoever that DW3 had his interest to safeguard especially so since the property in dispute was the security for the loan and furthermore the defendant is a friend of DW3.

In dealing with the subject of misrepresentation under s 340 of the National Land Code, it would be relevant to refer to the case of *Datuk Jagindar Singh & Ors v Tara Rajaratnam* [1983] 2 MLJ 196. I may add that the facts of the instant case are nearly on all fours with *Dato' Jagindar Singh*.

In that case, the respondent, the registered proprietor of land alleged that she was induced by fraud and undue influence of the first and second appellants to transfer the land to the second appellant. The respondent claimed that when the land was transferred, it was transferred as a security and there were two undertakings: (i) that the land would not be sold to anyone for one year without the consent of the respondent; and (ii) that the land would be transferred back to the respondent on her repaying the RM220,000 within one year. Contrary to these undertakings, the second appellant some 18 days later transferred the property to the third appellant. Subsequently, the land was again transferred to a land development company almost wholly owned by the first appellant. The land was eventually subdivided and sold to the public. The appellants were advocates and solicitors. The learned trial judge found that the appellants were guilty of fraud, breach of agreement and undue influence. The appellants appealed to the Federal Court.

The Federal Court dismissed the appeal and the learned Lee Hun Hoe CJ (Borneo) (as he then was) in delivering the judgement of the court had this to say (at p 203):

> On the evidence, the learned judge was entitled to take the view that the appellants were not honest in that the first appellant and second appellant

A never really intended to fulfil the conditions of the agreement and that all they wanted was mainly to get the respondent to sign the transfer form so that they could lay their hands on the property at a time of their choosing.

and further down, his Lordship stated at p 200:

B Under s 340(2)(a) of the National Land Code, the title or interest of any person or body shall not be indefeasible 'in the case of fraud or misrepresentation to which the person or body or any agent of the person or body, was a party or privy'.

Similarly in the instant case before me, the transfer form was signed in Sungai Petani where the defendant resided although the property is situated C in Alor Setar at the material time. The charge on the property was not discharged until 1979 although the defendant claimed that he undertook to settle the debt. As a matter of fact, the defendant testified that the property is now still charged to the son of the said Chitambaram Chettiar.

In his book, *Tenure and Land Dealings in the Malay States* (1st Ed, 1973), beginning at p 360, Dr David Wong makes this observation:

D

(ii) Misrepresentation

Section 340(2)(a) of the National Land Code sets out, alongside 'fraud', 'misrepresentation' as another ground on which a registered title may be set aside. As in the case of fraud, the person whose title is so rendered defeasible must be a party or privy to the misrepresentation. It is not clear whether, in E the light of its being placed on the same footing as 'fraud', 'misrepresentation' could be regarded as a separate ground on its own account, that is, whether or not it may be extended to include 'innocent misrepresentation'. There has not been any decision on this point. However, it would appear that the ground of 'misrepresentation' should be confined to cases which involve fraudulent or some sort of dishonest intention, ...

F Reverting to the instant case before me, I find that there is a relationship of trust as between the transferor and the transferee. Further, there is a specific purpose for the transfer. The deceased had no reason to believe that the defendant, her own son, would cheat her of her own land. As a mother, she did what she could to help her son in his financial straits but only to be G deceived.

In my judgement from the evidence adduced, it has been shown beyond doubt that there is an element of dishonesty on the part of the defendant which resulted in the deceased parting with her property.

I hold that the defendant is a bare trustee and holds the property in trust H for all the deceased's children, namely the three plaintiffs and the defendant.

Having given this case my utmost consideration, I find that the plaintiffs' claim should succeed.

In the event, I would allow the plaintiffs' claim with costs.

I *Plaintiffs' claim allowed.*

Reported by Lim Lee Na